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No. 93-1748 and 93-1757

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

LILLIAN SOLOMON, ET AL., PETITIONERS

v.

RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A., ET AL.

SUSAN SOLOMON PATULLO ET AL., PETITIONERS

v.

RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A., ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 12 U.S.C. 1821(e) (Supp. IV 1992) grants the Resolution Trust Corporation the authority, as receiver for a failed depository institution, to repudiate leases that are governed by state and local rent-control regulations.

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In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 93-1748

LILLIAN SOLOMON, ET AL., PETITIONERS

v.

RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A., ET AL.[1]

No. 93-1757

SUSAN SOLOMON PATULLO, ET AL., PETITIONERS

v.

RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A., ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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[1] Jerome Lederer was a party to the case in the court of appeals. The petitions indicate that he has died and that his estate is not seeking review of the judgment of the court of appeals. 93-1748 Pet. ii; 93-1757 Pet. ii. His estate is accordingly a respondent under this Court's Rule 12.4.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 18 F.3d 111.[2] The opinion of the district court (Pet. App. 36a-58a) is reported at 801 F. Supp. 1152.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 1994. The petitions for a writ of certiorari were filed on May 4, 1994 (93-1748) and May 5, 1994 (93-1757). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Resolution Trust Corporation (RTC) was formed under 12 U.S.C. 1441a(b) (Supp. IV 1992) and was granted, in Section 1441a(b)(4)(A), the "same powers and rights to carry out its duties with respect to [certain federally insured depository] institutions * * * as the Federal Deposit Insurance Corporation has under sections 1821, 1822, and 1823 of [Title 12]."[3] Section 1821(c)(1) authorizes the RTC to accept an appointment and act as receiver for such an institution.

Section 1821(e) describes the powers of such a receiver with respect to leases and other preexisting contracts of the institution. Section 1821(e)(1) provides that the receiver

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[2] References to "Pet. App." are to the appendix to the petition in No. 93-1757.

[3] The grant of authority in Section 1441a(b)(4)(A) refers to institutions described in Section 1441a(b)(3)(A), which are institutions whose accounts were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989, and for which a conservator or receiver was appointed between December 31, 1988, and October 1, 1993.

"may * * * repudiate any * * * lease * * * to which such institution is a party," if the receiver "determines" that "the performance of [the lease would] be burdensome," and if the receiver also "determines, in the * * * receiver's discretion, [that repudiation] will promote the orderly administration of the institution's affairs." Section 1821(e)(5) specifies the remedies available to a tenant if the RTC repudiates a lease under Section 1821(e)(1). If the tenant is not in default, the tenant has the option of either treating the lease as terminated by the repudiation or remaining in possession for the balance of the term of the lease, in which event the tenant must continue to pay the rent due under the terms of the lease.

In February, 1991, the Board of Directors of the RTC adopted and issued a policy statement limiting the circumstances in which it would exercise its powers under Section 1821(e) to remove tenants from properties subject to state and local rent-control and rent-stabilization regulations. C.A. App. A55-A57. Under that policy, "[i]t is clearly the intention of the Board of Directors to avoid displacing low and moderate income tenants from such units." *Id.* at A55. Accordingly, if "the RTC finds that units are leased by low or moderate income tenants, the RTC will not exercise its disaffirmance or repudiation powers with respect to those units." *Id.* at A56.[4] With respect to units not occupied by low or moderate income tenants, however, the statement concluded that "[t]he RTC, and ultimately the taxpayers, cannot be put in the position of continuing to underwrite rental of such units at a significant loss to the

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[4] The statement defined a low or moderate income tenant as "a family or individual whose income does not exceed one hundred and fifteen percent (115%) of the median income in the area involved, as determined by the U.S. Secretary of Housing and Urban Development, with adjustments for family size." C.A. App. A56-A57.

RTC." *Id.* at A55. Thus, the Board of Directors "determined that disaffirmance or repudiation of leases of these units * * * is required in these circumstances." *Id.* at A56.

2. This case involves the tenants of nine apartments in a building located at 444 E. 57th Street in New York City. Each of those apartments is subject to provisions of state and local law that either directly control the rent payable under those leases or specify the increases in rent that are permissible in any given year. In the mid-1980s, the owner of the apartments granted a security interest in the apartments to Nassau Federal Savings and Loan Association to secure a loan of $3.2 million. When the owner defaulted on the loan in 1987, Nassau Federal became the owner of the apartments. Nassau Federal, in turn, failed in March, 1990, and the RTC was appointed receiver. After determining that it was losing more than $18,000 per month on the building, the RTC as receiver notified the tenants that it was repudiating their tenancies under Section 1821(e). See Pet. App. 5a-10a.[5]

3. When the tenants and various state officials disputed the authority of the receiver to repudiate the tenancies, the RTC filed this action in the United States District Court for the Southern District of New York, seeking a declaration that it had the power to repudiate the tenancies in question. The district court granted summary judgment for petitioners, concluding that the RTC as receiver does not have the authority to repudiate the tenancies. Pet. App. 36a-58a. The court stated that applicable New York laws create "statutory tenancies" (*id.* at 44a), under which the tenants enjoy "occupancy rights that are independent of any lease they may have with their landlords" (*id.* at

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[5] The record does not indicate that any of the tenants are persons of low or moderate income protected by the RTC's policy statement. See Pet. App. 11a.

48a). The court reasoned that the power granted in Section 1821(e)(1) does not authorize repudiation of those tenancies, because they rest on a statute, not on a "contract" or "lease" subject to repudiation under Section 1821(e)(1). Pet. App. 48a-53a.

4. The court of appeals reversed. Pet. App. 1a-35a. Based on a detailed consideration of applicable New York laws (*id.* at 17a-24a), the court rejected petitioners' claims that those laws "creat[e] a statutory tenancy that is in effect non-contractual, and beyond the reach of RTC's repudiation power." *Id.* at 17a. The court concluded instead that

> New York's statutory tenancies—whether under rent stabilization or rent control—are contract-based leaseholds. That being the case, they fall within the express language of § 1821(e), and are subject to RTC's statutory power to repudiate. By repudiating the contract or lease creating the tenancy, RTC is effectively dissolving the tenancy. Once it has done so, no statutory or regulatory provision—at least none that can pass constitutional muster—can revive that tenancy.

Id. at 22a. The court noted that its conclusion that Section 1821(e) allows the RTC to terminate tenancies that could be extended indefinitely by the tenant under state law was supported by the contrast between the absolute repudiation right granted in Section 1821(e) and the lease termination provision in the Bankruptcy Code, which expressly permits a tenant of a bankrupt landlord to renew or extend the lease whenever the tenant has a right to such a renewal or extension "that is enforceable by such lessee under applicable nonbankruptcy law." Pet. App. 24a-26a (discussing 11 U.S.C. 365(h)(1)).

The court then turned to petitioners' argument that the leasehold in a rent-controlled apartment is perpetual and thus not subject to repudiation because of the provisions of Section 1821(e)(5) that allow a tenant to remain in occupancy until the end of the term of its lease. Pet. App. 26a-29a. The court rejected that argument based on its conclusion that the lease term of a rent-controlled apartment ends at the end of the biennial period provided for review of rent under the rent-control laws. *Id.* at 28a-29a.

The court also rejected petitioners' argument that the RTC erred in determining that the tenancies were burdensome. Pet. App. 29a-30a. The court explained:

> It is uncontroverted that (a) these tenancies are causing RTC to lose close to $19,000 per month and (b) these occupied rent-regulated units are worth millions of dollars less than they are worth vacant or free of rent regulations. It cannot be said therefore that RTC abused its discretion in finding these tenancies burdensome.

Id. at 30a.

ARGUMENT

Petitioners contend that the court of appeals erred in concluding that 12 U.S.C. 1821(e)(1) (Supp. IV 1992) authorizes a federal receiver for a failed depository institution to terminate leases protected by New York State and City rent regulations. 93-1748 Pet. 11-28; 93-1757 Pet. 11-17. The conclusion of the court of appeals is, however, completely consistent with the text of Section 1821. Moreover, the decision below is the first to consider the questions raised by the petitions. Review of those questions by this Court at this time would therefore be premature.

1. Section 1821(e)(1) authorizes the RTC in specified circumstances to "repudiate any contract or lease * * * to

which [the failed] institution is a party." The term "lease" generally refers to "[a]ny agreement which gives rise to [a] relationship of landlord and tenant * * * or lessor and lessee." *Black's Law Dictionary* 889 (6th ed. 1990). Each individual petitioner's right to possession of one of the apartments owned by the receiver is derived from such an agreement. The RTC's repudiation of each agreement terminates the tenant's entitlement to remain in possession after the end of the present lease term.

Applicable New York state and local laws have altered many of the terms of the lease agreements, severely limiting (if not eliminating) the capacity of a landlord to enforce provisions that originally entitled the landlord to terminate a tenant's right of occupancy. Those laws do not, however, remove the lease agreement as the foundation of the tenancy; rather, they alter the terms of the lease as a matter of local law. The individual petitioners thus hold rights to occupy real estate based on agreements that have been modified and regulated by state law. The court of appeals' conclusion that those rights constitute a "lease" for purposes of Section 1821 is a reasonable one.

2. Petitioners' arguments do not successfully refute the court of appeals' conclusion that a right of occupancy founded on an agreement remains a "lease," even though state law may regulate or modify the terms of occupancy.

a. The principal argument of petitioners in No. 93-1748 is that the court of appeals erred by allowing the RTC to extend its right to terminate a "lease" to include the right to terminate an "obligation * * * not created by a contract or lease, [which] indeed applies notwithstanding a contrary contract or lease." 93-1748 Pet. 15.[6] That analy-

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[6] See 93-1748 Pet. 23-25 (arguing that court of appeals erred in allowing power to terminate agreements to extend to "obligations

sis misconstrues the nature of the RTC's action. The RTC has not directly taken any action with respect to any obligation imposed by the tenant-protective state laws on which petitioners rely. That situation would arise if the RTC asserted a right to raise the rents under the existing tenancies in derogation of applicable state laws, or insisted on exercising a right of termination found in the original lease, notwithstanding provisions of state law barring exercise of that right. Instead, the RTC has repudiated the entire underlying agreement on which the tenant's right of occupancy is founded, relying not on any provision of the agreement itself, but on the explicit, supervening authority of Section 1821(e). The court of appeals has decided that the complex of rights the tenant holds pursuant to its original agreement and the applicable provisions of state law constitutes a "lease" within the meaning of Section 1821; as such, it is subject to repudiation under that Section.

b. Petitioners err in asserting that the decision below "is in direct conflict with the relevant New York cases." 93-1757 Pet. 12. As the court of appeals noted (Pet. App. 15a), the relevant question of state law is whether "New York law creates 'statutory' tenancies not ultimately based on a lease or other voluntary contractual arrangement." Because the tenancies are, in fact, ultimately based on a lease or other voluntary contractual arrangement, the court of appeals concluded that Section 1821(e) authorizes the RTC to repudiate them.

Petitioners identify no New York authority directly addressing the question whether a rent-controlled or rent-stabilized tenancy should be viewed as resting on a pervasively regulated agreement or as a creature of statute.

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imposed by New York's statutory tenancy laws [that] are obviously not created by any agreement").

That question is not generally relevant to a dispute between a landlord and a tenant. In the court of appeals' analysis, the key and undisputed feature of state law is that the obligations of New York's rent-control and rent-stabilization laws do not have any effect except in situations where the parties (or their predecessors in interest) previously have entered into a voluntary agreement creating a landlord-tenant relationship. Because the effect of the laws on which petitioners rely is limited to cases in which the parties initiate a voluntary relationship through consummation of a lease, the court of appeals concluded that it was accurate to characterize the relationship as a whole as a lease.

c. Petitioners argue (93-1748 Pet. 16-20) that this Court should consider whether state or federal law should determine the meaning of the term "lease" in Section 1821(e). It was entirely appropriate, however, for the court of appeals to treat the meaning of the federal statute as a federal question, while looking to state law to evaluate the nature and extent of underlying legal rights and obligations. See, *e.g.*, *United States* v. *Idaho*, 113 S. Ct. 1893 (1993) (fees characterized by Idaho law as "filing fees" rather than "costs" are nevertheless "costs" for purposes of 43 U.S.C. 666); *District of Columbia* v. *Greater Washington Board of Trade*, 113 S. Ct. 580 (1992) (whether particular state law "relates to" a plan protected by ERISA is a question of federal law, dependent on the effect of the state law); *Cipollone* v. *Liggett Group, Inc.*, 112 S. Ct. 2608, 2611 (1992) (preemption by federal statute of rules relating to "statement[s] * * * in the advertising of * * * cigarettes" is a question of federal law, dependent on the requirements of state causes of action); *United States* v. *National Bank of Commerce*, 472 U.S. 713, 727 (1985) ("The question whether a state-law right constitutes 'property' or 'rights to property' [under 26 U.S.C. 6331(a)] is

a matter of federal law."); *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 111-112 (1983) ("Whether one has been 'convicted' within the language of the [federal] gun control statutes is necessarily * * * a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State.")

3. The court of appeals' decision in this case does not conflict with decisions of this Court or of any other court of appeals. Indeed, no other court of appeals has considered the questions presented by the petition.

a. Petitioners assert (93-1748 Pet. 16) that the decision below conflicts with this Court's decisions in *Reconstruction Finance Corporation* v. *Beaver County*, 328 U.S. 204 (1946); *United States* v. *Brosnan*, 363 U.S. 237 (1960); *De Sylva* v. *Ballentine*, 351 U.S. 570 (1956); *Kamen* v. *Kemper Financial Services, Inc.*, 500 U.S. 90 (1991); and *Butner* v. *United States*, 440 U.S. 48 (1979). None of those cases involved the interpretation of Section 1821(e), or of any statute containing similar language. While the decisions concededly support the proposition that "courts should adopt the applicable state law" when they interpret statutes using terms "deeply rooted in state traditions, customs, habits, and laws," 93-1748 Pet. 16 (internal quotation marks omitted), they do not support petitioners' broader argument that the meaning of terms of federal statutes is ultimately a question of state law. See, *e.g.*, *Beaver County*, 328 U.S. at 208 ("Pennsylvania's definition of 'real property' cannot govern if it conflicts with the scope of that term as used in the federal statute. What meaning Congress intended is a federal question which we must determine."); *De Sylva*, 351 U.S. at 580 ("The scope of a federal right is, of course, a federal question.").[7]

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[7] See also *Deitrick* v. *Greaney*, 309 U.S. 190, 200-201 (1940) (rejecting reliance on Massachusetts law as interposing a defense to a claimed

The decisions upon which petitioners rely make clear that federal courts resolving questions of statutory interpretation should take account of relevant significant state interests,[8] and in appropriate cases adopt state-law definitions for general terms used in federal statutes. The court of appeals accordingly "consult[ed] for guidance the body of New York law concerning the design and operation of the rent regulation programs at issue." Pet. App. 15a. Petitioners identify no applicable state law that is inconsistent with the court's holding (*ibid.*) that the tenancies held by the individual petitioners in this case are "ultimately based on a lease or other voluntary contractual agreement."

b. Petitioners contend that the court of appeals' conclusion that the meaning of the term "lease" is a matter of federal law conflicts with decisions relying on state law in interpreting the power of a bankruptcy court to repudiate "any executory contract or unexpired lease of the debtor." 93-1748 Pet. 17-18 (discussing 11 U.S.C. 365(a), and citing *River Production Co.* v. *Webb* (*In re Topco, Inc.*), 894 F.2d 727 (5th Cir. 1990); *Mitchell* v. *Streets* (*In re Streets & Beard Farm Partnership*), 882 F.2d 233 (7th Cir. 1989)). However, neither of the cited cases held that the meaning of the terms "contract" and "lease" in federal bankruptcy statutes was a matter of state law. Rather, those decisions held—as did the court below—that a federal court should

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violation of the National Bank Act because "it is the federal statute which condemns as unlawful respondent's acts"; reasoning that "[t]he extent and nature of the legal consequences of this condemnation * * * are * * * to be derived from it and the federal policy which it has adopted").

[8] See *BFP* v. *RTC*, 114 S. Ct. 1757, 1764 (1994) ("Federal statutes impinging upon important state interests cannot be construed without regard to the implications of our dual system of government.") (internal quotation marks and ellipses omitted).

look to state law to determine the nature of the obligations under the agreements in issue, and then determine how obligations of that type should be treated under federal law. The *River Production* court thus held that an oil and gas lease was not a "lease" under Section 365 of the Bankruptcy Code because, under Texas law, it created a determinable fee interest, not a landlord-tenant relationship. 894 F.2d at 739 n.17. Similarly, the *Mitchell* court explained that "Congress intended § 365 to apply to contracts where significant unperformed obligations remain on both sides," and then "look[ed] to relevant state law" to "determin[e] the significance of the remaining obligations under a contract." 882 F.2d at 235.

c. Petitioners contend that the decision below conflicts with various decisions of this Court recognizing a distinction between obligations imposed by state law and obligations imposed by contract. 93-1748 Pet. 25-26 (citing *Cipollone* v. *Liggett Group, Inc.*, 112 S. Ct. 2608 (1992); *General Motors Corporation* v. *Romein*, 112 S. Ct. 1105 (1992); and *Armstrong* v. *United States*, 364 U.S. 40 (1960)). None of those decisions addresses the meaning of the term "lease," or any similar term, in any statute. Moreover, contrary to petitioners' contention (93-1748 Pet. 26), nothing in the opinion below suggests that repeal of New York's rent regulation laws would violate the Contract Clause as interpreted in *Romein*. The court of appeals' analysis did not treat obligations imposed under those laws as part of the contract between landlord and tenant. The court concluded only that the underlying contractual relationship remained a "lease," subject to repudiation under Section 1821(e), despite the effects of supervening state regulation that might limit or modify the lease terms at any given time.

Similarly, there is no merit in petitioners' contention (93-1748 Pet. 26) that the receiver's repudiation of the

leases constitutes a taking. Contrary to petitioners' argument, the Second Circuit has not countenanced "obliterat[ion]" (*ibid.*) of an interest in property. The Second Circuit recognized only the longstanding power of an insolvent party's representative to terminate executory contracts as part of the winding up or reorganization of the affairs of the insolvent. Compare 11 U.S.C. 365 (provisions governing rejection of executory contracts in bankruptcy). Petitioners do not suggest that the exercise of that power constitutes a taking.

d. Petitioners contend that the decision below conflicts with other decisions interpreting the term "agreement" in 12 U.S.C. 1823(e). 93-1748 Pet. 26-27 (citing *Bateman* v. *FDIC*, 970 F.2d 924 (1st Cir. 1992); *Patterson* v. *FDIC*, 918 F.2d 540 (5th Cir. 1990)); 93-1757 Pet. 15 (citing *Patterson*). Those decisions held only that obligations created by state law, independent of any private agreement, are binding on a federal receiver despite Section 1823(e)'s prohibition against enforcement of certain private "agreement[s]" that are not adequately reflected in the records of the insolvent institution. *Bateman*, 970 F.2d at 927-929 (mechanic's lien created without agreement); *Patterson*, 918 F.2d at 543-545 (state constitutional homestead interest). The court in this case, by contrast, held that a landlord-tenant relationship that commences with an agreement remains a "lease," even if state law later modifies the contractual rights of the parties. The two issues bear little relationship to one another.

e. Finally, petitioners contend that the decision below conflicts with two decisions interpreting the words "contract" and "lease" in 11 U.S.C. 365(a). 93-1748 Pet. 27-28 (citing *In re Chicago, Rock Island and Pacific Railroad*, 772 F.2d 299 (7th Cir. 1985), cert. denied, 475 U.S. 1047 (1986); *Saravia* v. *1736 18th St., N.W., Limited Partnership*, 844 F.2d 823 (D.C. Cir. 1988)). Those cases con-

sidered not whether a landlord had the power to reject a lease burdened by state regulations, but rather whether tenancies that existed after rejection of a lease in bankruptcy were exempt from state laws imposing obligations on landlords. The *Rock Island* case held that a landlord was not immune from state laws regulating the rent to be charged to grain elevator operators solely because the landlord acquired the land from a trustee in bankruptcy. 772 F.2d at 302-303. Similarly, *Saravia* held that a debtor in bankruptcy was obligated to "cur[e] violations of the District of Columbia housing code" and "to continue to provide essential services" to tenants who remained in possession after the debtor rejected their leases. That case did not consider whether Section 365 granted the authority to the trustee to reject the lease itself; indeed, the court noted that "there is no dispute that the debtor properly rejected the tenants' leases." 844 F.2d at 824-825. This case, by contrast, involves the distinct question whether the RTC has the right to repudiate the tenancies in question.

4. Petitioners contend (93-1748 Supp. Br. 1-5; see 93-1748 Pet. 19-20) that the decision of the court of appeals should be vacated and the case remanded for reconsideration in light of this Court's recent decisions in *BFP* v. *RTC*, 114 S. Ct. 1757 (1994), and *O'Melveny & Myers* v. *FDIC*, No. 93-489 (June 13, 1994).

a. Contrary to petitioners' argument (93-1748 Supp. Br. 1-2), the decision below does not conflict with *BFP*. As with the earlier decisions of this Court on which petitioners rely at page 16 of the petition in No. 93-1748 (discussed at pages 10-11, *supra*), the point of *BFP* is only that "[f]ederal statutes impinging upon important state interests cannot be construed without regard to the implications of our dual system of government." 114 S. Ct. at 1764 (internal quotation marks and ellipses omitted). Peti-

tioners suggest (93-1748 Supp. Br. 2) that the decision below contravened that principle by "displac[ing]" applicable principles of state law. That suggestion assumes that applicable principles of state law call for a decision contrary to that of the court of appeals. As explained above, however, petitioners identify no state authority that contradicts the court of appeals' understanding of the nature of the relevant state-law obligations.

b. Petitioners also err in arguing (93-1748 Supp. Br. 3-4) that this Court's decision in *O'Melveny* calls the court of appeals' analysis into question. In that case, the Court rejected the FDIC's contention that "a federal common-law rule and not California law" governed certain issues when the FDIC was "asserting * * * causes of action created by California law." *O'Melveny & Myers* v. *FDIC*, No. 93-489 (June 13, 1994), slip op. 3. This case, by contrast, involves the breadth of a federal right of repudiation expressly created by federal statute.

Petitioners contend (93-1748 Supp. Br. 4) that *O'Melveny* requires federal courts to defer to state law in determining the meaning of the reference to a "lease" in Section 1821(e). The court of appeals complied with any such requirement by examining the state-law attributes of the tenancies of the individual petitioners. Petitioners' real complaint, therefore, is that the court of appeals rejected their understanding of the applicable state law. That question does not warrant review by this Court. See, *e.g.*, *O'Melveny*, slip op. 2 (Stevens, J., concurring) (local federal judges are in best position to determine questions of local law).

Finally, petitioners contend that a portion of the analysis of the court of appeals rests on the notion—criticized in *O'Melveny*, slip op. 9—that an unqualified "desire for more money" justifies a broad interpretation of the

powers of the RTC and the FDIC. 93-1748 Supp. Br. 4 (internal quotation marks omitted). To be sure, the court of appeals stated, in the portion of its opinion determining the term of a rent-controlled lease for purposes of Section 1821(e)(5)(A)(ii), that Section 1821(e) "was conferred in aid of an acute financial emergency, and cannot be construed fairly to accommodate so prolonged a residual tenancy." Pet. App. 28a. But the court's holding on that point stated that a "[r]ent-controlled tenancy *under New York law* is therefore neither perpetual nor measured by the life of the tenant (and the tenant's successors)." *Id.* at 29a (emphasis added). Because the court's conclusion rested on its understanding of the attributes of a rent-controlled tenancy under state law, there is no reason to suppose that the court of appeals would reach a different conclusion in this case in light of *O'Melveny*.

* * * * *

The decision below represents a sound interpretation of federal law, informed by a careful analysis of relevant state law by the local federal court of appeals. The decision does not conflict with any decision of this Court, or of any other court of appeals. In addition, because no other court of appeals has had occasion to consider the questions raised in this case, review of those questions by this Court would be premature.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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